

AMENDED IN ASSEMBLY JUNE 2, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 764

**Introduced by Assembly Member ~~Nava~~ Members *Nava, Bass, and Feuer*
(*Coauthor: Assembly Member Galgiani*)**

February 26, 2009

An act to amend ~~Sections 10085 and 10085.5 of Section 10085 of, to amend, repeal, and add Section 10085.5 of, and to add and repeal Section 6106.4 of,~~ the Business and Professions Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 764, as amended, Nava. Real estate brokers.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements be submitted to him or her at least 10 calendar days before the materials are used and makes it a misdemeanor, punishable by a fine not exceeding \$1,000, or imprisonment in the county jail not exceeding 6 months, or both, to use any agreement that the commissioner has ordered not to be used. Existing law authorizes the commissioner to determine the form of the advance fee agreements.

This bill would instead require the commissioner to determine the form of advance fee agreements and loan modification agreements, as

defined, and to mandate the submission of advance fee agreement and loan modification agreement materials prior to their use. The bill would also prohibit advertisements used in obtaining advance fee agreements or loan modification agreements from using words, letters, initials, symbols, or other devices that are similar to those used by a governmental agency or nonprofit entity, as specified. The bill would also increase the maximum fine for using any agreement that the commissioner has ordered not to be used from \$1,000 to \$2,500, *and would increase the maximum imprisonment time for a violation to 12 months*. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The Real Estate Law makes it unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with a mortgage loan before the borrower becomes obligated to complete the loan and for performing any other activity for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of the Real Estate Law. A violation of that provision constitutes a public offense punishable by a fine of up to \$10,000 for an individual or \$50,000 for a corporation. Existing law exempts from that prohibition state-chartered banks, savings associations, credit unions, industrial loan companies, and licensed finance lenders and brokers.

This bill would increase those fines to \$20,000 and \$60,000, respectively, *and would increase the maximum imprisonment time for a violation to 12 months*. The bill would also make it unlawful, *until January 1, 2013*, for any person to claim, demand, charge, receive, collect, or contract for any fee for performing services for borrowers in connection with the modification of the terms of a mortgage loan, unless the person is a licensed real estate broker, and, as applied to *licensed* real estate brokers, would prohibit ~~advance fees~~ *the collection of any fee* for the performance of those services *until the loan has been modified, and would require provision of a specified notice prior to commencing those services*. By creating a new crime *under the Real Estate Law*, the bill would impose a state-mandated local program. The bill would *also, until January 1, 2013*, authorize the commissioner to adopt rules and regulations to implement provisions related to loan modification agreements, *and provide that a violation of the above by an attorney may subject him or her to disciplinary sanctions*. The bill

would further exempt from the fee prohibition licensed residential mortgage lenders and ~~services~~ *servicers*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6106.4 is added to the Business and
2 Professions Code, to read:

3 6106.4. (a) It shall constitute cause for the imposition of
4 discipline of an attorney within the meaning of this chapter for an
5 attorney to engage in any conduct prohibited under Section
6 10085.5 in connection with a one-to-four unit dwelling.

7 (b) This section shall remain in effect only until January 1, 2013,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before January 1, 2013, deletes or extends that date.

10 ~~SECTION 1.~~

11 SEC. 2. Section 10085 of the Business and Professions Code
12 is amended to read:

13 10085. (a) The commissioner shall require that any or all
14 materials used in obtaining advance fee agreements and loan
15 modification agreements, including, but not limited to, the contract
16 forms, letters, or cards used to solicit prospective sellers or
17 borrowers, and radio and television advertising be submitted to
18 him or her at least 10 calendar days before they are used. Should
19 the commissioner determine that any such matter, when used alone
20 or with any other matter, would tend to mislead, he or she may,
21 within 10 calendar days of the date he or she receives same, order
22 that it not be used, disseminated, nor published.

23 (1) Advertisements used in obtaining advance fee agreements
24 or loan modification agreements shall not employ words, letters,
25 initials, symbols, or other devices that are so similar to those used
26 by a governmental agency, nonprofit or charitable institution, or
27 senior organization that they could have the capacity or tendency

1 to mislead the public. Examples of misleading materials include,
2 but are not limited to, those that imply either of the following:

3 (A) The advertised services are in any manner provided or
4 endorsed by a governmental agency, nonprofit or charitable
5 institution, or senior organization.

6 (B) The advertiser is the same as, connected with, or endorsed
7 by, a governmental agency, nonprofit or charitable institution, or
8 senior organization.

9 (2) Any person using, disseminating, or publishing any matter
10 that the commissioner has ordered, pursuant to this section, not to
11 be used, published, or disseminated shall be guilty of a
12 misdemeanor punishable by a fine not exceeding two thousand
13 five hundred dollars (\$2,500), or by imprisonment in the county
14 jail not exceeding—six 12 months, or both, for each use,
15 dissemination, or publication.

16 (b) The commissioner shall determine the form of the advance
17 fee agreements and loan modification agreements, and all material
18 used in soliciting prospective owners, sellers, and borrowers shall
19 be used in the form and manner which he or she determines is
20 necessary to carry out the purposes and intent of this part.

21 (c) For purposes of this section, “loan modification agreement”
22 means a contract by a licensed real estate broker for the
23 performance of services for a borrower in connection with the
24 modification of the terms of a loan secured directly or collaterally
25 by a lien on single-family residential real property.

26 (d) Any violation of any of the provisions of this part or of the
27 rules, regulations, orders, or requirements of the commissioner
28 thereunder shall constitute grounds for disciplinary action against
29 a licensee, or for proceedings under Section 10081, or both. These
30 sanctions are in addition to the criminal proceedings hereinbefore
31 provided.

32 ~~SEC. 2.~~

33 *SEC. 3.* Section 10085.5 of the Business and Professions Code
34 is amended to read:

35 10085.5. (a) It shall be unlawful for any person to claim,
36 demand, charge, receive, collect, or contract for an advance fee
37 (1) for soliciting lenders on behalf of borrowers or performing
38 services for borrowers in connection with loans to be secured
39 directly or collaterally by a lien on real property, before the
40 borrower becomes obligated to complete the loan or, (2) for

1 performing any other activities for which a license is required,
2 unless the person is a licensed real estate broker and has complied
3 with the provisions of this part.

4 ~~(b) (1) It shall be unlawful for a licensed real estate broker to~~
5 ~~claim, demand, charge, receive, collect, or contract for an advance~~
6 ~~fee for performing services for borrowers in connection with the~~
7 ~~modification of the terms of a loan secured directly or collaterally~~
8 ~~by a lien on a single family residential real property.~~

9 ~~(2)~~

10 (b) (1) Any licensed real estate broker who contracts for loan
11 modification agreements, as defined in subdivision (c) of Section
12 10085, shall first seek approval from the commissioner. The
13 commissioner may issue such rules and regulations as he or she
14 deems necessary to accomplish the purpose of the provisions of
15 this code related to loan modification agreements.

16 (2) Any licensed real estate broker who contracts for loan
17 modification agreements, as defined in subdivision (c) of Section
18 10085, shall provide the following to the borrower:

19 (A) As a separate statement, in not less than 14-point bold type,
20 prior to entering into any loan modification agreement with the
21 borrower:

22

23 *“It is not necessary to pay a third party to arrange for a loan*
24 *modification from your mortgage lender or servicer. You may call*
25 *your lender directly to ask for a change in your loan terms.*
26 *Nonprofit housing counseling agencies also offer these and other*
27 *forms of borrower assistance free of charge. A list of nonprofit*
28 *housing counseling agencies approved by the United States*
29 *Department of Housing and Urban Development (HUD) is*
30 *available from your local HUD office or by visiting www.hud.gov.”*

31

32 (B) *The licensed real estate broker’s license number.*

33 (c) (1) It shall be unlawful for any person to claim, demand,
34 charge, receive, collect, or contract for any fee for performing
35 services for borrowers in connection with the modification of the
36 terms of a loan secured directly or collaterally by a lien on
37 single-family residential real property, unless the person is a
38 licensed real estate broker and has complied with the provisions
39 of this part.

1 (2) *It shall be unlawful for a licensed real estate broker to claim,*
 2 *demand, charge, receive, or collect any fee for performing services*
 3 *for borrowers in connection with the modification of the terms of*
 4 *a loan secured directly or collaterally by a lien on single-family*
 5 *residential real property until the terms of that loan have been*
 6 *modified.*

7 (d) This section does not prohibit the acceptance or receipt of
 8 any fee by a bank, savings association, credit union, industrial loan
 9 company, person acting within the scope of a license issued to that
 10 person pursuant to Division 9 (commencing with Section 22000)
 11 of the Financial Code, or person acting within the scope of a license
 12 issued to that person pursuant to Division 20 (commencing with
 13 Section 50000) of the Financial Code, in connection with loans to
 14 be secured directly or collaterally by a lien on real property or in
 15 connection with the modification of the terms of a loan secured
 16 directly or collaterally by a lien on single-family residential real
 17 property. This section does not apply to charges made by title
 18 insurers and controlled escrow companies pursuant to Chapter 1
 19 (commencing with Section 12340) of Part 6 of Division 2 of the
 20 Insurance Code.

21 (e) A violation of this section is a public offense punishable by
 22 a fine not exceeding twenty thousand dollars (\$20,000), by
 23 imprisonment in the county jail for a term not to exceed ~~six~~ 12
 24 months, or by both that fine and imprisonment, or if by a
 25 corporation, the violation is punishable by a fine not exceeding
 26 sixty thousand dollars (\$60,000).

27 (f) *This section shall remain in effect only until January 1, 2013,*
 28 *and as of that date is repealed, unless a later enacted statute, that*
 29 *is enacted before January 1, 2013, deletes or extends that date.*

30 SEC. 4. *Section 10085.5 is added to the Business and*
 31 *Professions Code, to read:*

32 10085.5. (a) *It shall be unlawful for any person to claim,*
 33 *demand, charge, receive, collect, or contract for an advance fee*
 34 *(1) for soliciting lenders on behalf of borrowers or performing*
 35 *services for borrowers in connection with loans to be secured*
 36 *directly or collaterally by a lien on real property, before the*
 37 *borrower becomes obligated to complete the loan or; (2) for*
 38 *performing any other activities for which a license is required,*
 39 *unless the person is a licensed real estate broker and has complied*
 40 *with the provisions of this part.*

1 **(b)** *This section does not prohibit the acceptance or receipt of*
2 *an advance fee by any bank, savings association, credit union,*
3 *industrial loan company, person acting within the scope of a*
4 *license issued to that person pursuant to Division 9 (commencing*
5 *with Section 22000) of the Financial Code, or person acting within*
6 *the scope of a license issued to that person pursuant to Division*
7 *20 (commencing with Section 50000) of the Financial Code, in*
8 *connection with loans to be secured directly or collaterally by a*
9 *lien on real property. This section does not apply to charges made*
10 *by title insurers and controlled escrow companies pursuant to*
11 *Chapter 1 (commencing with Section 12340) of Part 6 of Division*
12 *2 of the Insurance Code.*

13 **(c)** *A violation of this section is a public offense punishable by*
14 *a fine not exceeding twenty thousand dollars (\$20,000), by*
15 *imprisonment in the county jail for a term not to exceed 12 months,*
16 *or by both that fine and imprisonment, or if by a corporation, the*
17 *violation is punishable by a fine not exceeding sixty thousand*
18 *dollars (\$60,000).*

19 **(d)** *This section shall become operative on January 1, 2013.*

20 ~~SEC. 3:~~

21 **SEC. 5.** No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.